



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2019-0301; FRL-9994-02-Region 6]

Air Plan Approval; Arkansas; Revisions to State Implementation Plan Permitting Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Arkansas State Implementation Plan (SIP) Permitting Programs submitted on October 24, 2002, July 26, 2010, November 6, 2012, and March 24, 2017. Most of the revisions are administrative in nature and make the SIP current with Federal rules. In addition, the revisions add permit flexibility provisions to the NSR program. This proposed action is consistent with the requirements of section 110 of the CAA.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2019-0301, at <https://www.regulations.gov> or via email to mohr.ashley@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ashley Mohr, 214-665-7289, mohr.ashley@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ashley Mohr, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Dallas, TX 75202, 214-665-7289, mohr.ashley@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Mohr or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The EPA is proposing approval of SIP revisions submitted by Arkansas on October 24, 2002, July 26, 2010, November 6, 2012, and March 24, 2017. The proposed revisions addressed in this action include administrative revisions, revisions that make the Arkansas SIP current with Federal rules, and revisions that add permit flexibility provisions to the NSR program. Also,

included in this action is the proposed approval of revisions to the Arkansas SIP that address EPA's previous 2016 disapproval related to biomass deferral language. The specific provisions addressed in this action are discussed below.

A. October 24, 2002 Submittal

On October 24, 2002, Arkansas submitted revisions to the SIP that included changes enacted at Reg. 26, Chapters 3, 4, and 6. These revisions were adopted by the Arkansas Pollution Control & Ecology Commission on August 23, 2002, and became effective on September 26, 2002.

This action is the EPA's first action on the October 24, 2002 SIP revision submittal and will address all of the SIP revisions to Reg. 26, Chapters 3, 4, and 6 contained in the 2002 submittal.

B. July 26, 2010 Submittal

On July 26, 2010, Arkansas submitted revisions to the SIP that included changes enacted at Reg. 19, Chapters 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, and Appendix A and enacted at Reg. 26, Chapters 3, 4, 5, and 6. These revisions were adopted by the Arkansas Pollution Control & Ecology Commission on December 5, 2008, and became effective on January 25, 2009. (On November 23, 2010, Teresa Marks, Director of the Arkansas Department of Environmental Quality (ADEQ), provided a clarification letter regarding the July 26, 2010 submittal. This clarification letter was a resubmission of the SIP revision resulting from the previous submittal containing one incorrect hardcopy and electronic copy of the SIP revision.) On March 28, 2019, Arkansas withdrew a portion of the July 26, 2010 submitted revisions from

consideration for approval into the Arkansas SIP. Therefore, EPA is not taking action on those withdrawn revisions, as they are no longer in front of EPA for review.¹

The EPA is proposing to take action only on the revisions to Reg. 19, Chapter 4, Sections 405, 411, 414, 415, and 416; Reg. 19, Appendix A; Reg. 26, Chapter 3, Sections 301 and 302; Reg. 26, Chapter 4, Sections 401, 402, 407, 409, and 410; Reg. 26, Chapter 5, Sections 501 and 502; and Reg. 26, Chapter 6, Sections 601, 602, 603, and 604. The July 26, 2010 submittal also contained the replacement of “Sections” with “Reg.” throughout Reg. 19 and Reg. 26 section headings (e.g., “Section 26.101” heading revised to “Reg. 26.101”). We are proposing to approve this non-substantive change throughout the current SIP-approved portions of Reg. 19 and Reg. 26. The EPA has already taken action on other elements of this submittal as follows: (1) EPA approved revisions to Reg. 19, Chapter 15 on March 12, 2012 (77 FR 14604); (2) EPA approved revisions to Reg. 19, Chapter 9 on April 2, 2013 (78 FR 19596); (3) EPA approved revisions to Reg. 19, Chapter 14 on April 17, 2014 (78 FR 21631); (4) EPA approved revisions to Reg. 19, Chapters 1, 2, 3, 5, 6, 7, 10, 11, and 13 on March 4, 2015 (80 FR 11573); and (5) EPA approved a portion of the revisions to Reg. 19, Chapter 4 on June 29, 2018 (83 FR 30553).

C. November 6, 2012 Submittal

On November 6, 2012, Arkansas submitted revisions to the SIP that included changes enacted at Reg. 19, Chapters 1, 2, 3, 5, 9 and Appendix A and enacted at Reg. 26, Chapter 4. These revisions were adopted by the Arkansas Pollution Control & Ecology Commission on June 22, 2012, and October 26, 2012, and became effective on July 9, 2012, and November 18, 2012, respectively. On March 28, 2019, Arkansas withdrew a portion of the November 6, 2012 submitted revisions from consideration for approval into the Arkansas SIP. Therefore, EPA is

¹ Arkansas withdrew the following revisions from the July 26, 2010 submittal in their March 28, 2019 request for withdrawal: changes to Reg. 19.407(B)(1)(b).

not taking action on those withdrawn revisions, as they are no longer before EPA for review.² In addition, EPA returned a portion of the November 6, 2012 submitted revisions back to Arkansas because they were no longer applicable as a result of the March 28, 2019 withdrawal request. EPA is not taking action those returned revisions, as they are no longer in front of EPA for review.³

The EPA is proposing to take action only on the revisions to Reg. 19, Chapter 4, Section 407; Reg. 19, Appendix A; and Reg. 26, Chapter 4, Section 401. The EPA has already taken action on other elements of this submittal as follows: (1) EPA approved revisions to Reg. 19, Chapter 9 on April 2, 2013 (78 FR 19596); (2) EPA approved revisions to Reg. 19, Chapters 1 and 2 on March 4, 2015 (80 FR 11573); and (3) EPA approved revisions to Reg. 9, Chapters 1, 2, 3, 5, and 9 on April 30, 2015 (80 FR 24216).

D. March 24, 2017 Submittal

On March 24, 2017, Arkansas submitted revisions to the SIP that included changes enacted at Reg. 19, Chapters 1, 2, 3, 4, 5, 7, 9, 11, 13, 14, 15, Appendix A, and Appendix B and enacted at Reg. 26, Chapters 3, 4, 5, and 6, as well as, the submittal of Infrastructure and NAAQS SIPs. These revisions were adopted by the Arkansas Pollution Control & Ecology Commission on February 26, 2016, and became effective on March 14, 2016.

The EPA is proposing to take action only on the revisions to Reg. 19, Chapter 7, Sections 702 and 703; Reg. 19, Chapter 9, Sections 901, 903, and 904; Reg. 19, Chapter 11; Reg. 19, Appendix A; Reg. 26, Chapter 3, Section 302; Reg. 26, Chapter 4, Sections 401, 402, and 407;

² Arkansas withdrew the following revisions from the November 6, 2012 submittal in their March 28, 2019 request for withdrawal: changes to Reg. 19.405(B)(1); changes to Reg. 19.407(C)(3); changes to Reg. 19, Appendix A, Group A, Item 1; and the addition of “75,000 tpy carbon dioxide” to Reg. 19, Appendix A, Group A, Item 13.

³ As a result of Arkansas’s March 28, 2019 withdrawal request, the revisions to 407(B)(1)(b) submitted on November 6, 2012 were no longer applicable and were returned to the state on May 21, 2019.

Reg. 26, Chapter 5, Section 502; and Reg. 26, Chapter 6, Sections 602, 603, and 604. The EPA has already taken action on other elements of this submittal as follows: (1) EPA approved revisions to Reg. 19, Chapter 9 on April 2, 2013 (78 FR 19596); (2) EPA approved revisions to Reg. 19, Chapters 1 and 2 on March 4, 2015 (80 FR 11573); (3) EPA approved revisions to Reg. 9, Chapters 1, 2, 3, 5, and 9 on April 30, 2015 (80 FR 24216).

II. Summary of Revisions to the Arkansas SIP and EPA's Evaluation

A. Non-Substantive Changes

Non-substantive changes were made to Regulation 19, Chapter 4, Sections 405, 406, 407, 411, 412, and 415; Chapter 7, Sections 702 and 703; Chapter 9, Sections 901, 903, and 904; Chapter 11; Appendix A and Regulation 26, Chapter 3, Section 302; Chapter 4, Sections 401, 402, and 407; Chapter 5, Section 502; and Chapter 6, Sections 602, 603, and 604 such as edits to acronyms, punctuation and section symbols. A complete listing of the non-substantive changes is in the TSD for this action. In addition, as part of the July 2, 2010 SIP revision submittal, section headings were changed from "Section" to "Reg." throughout Reg. 19 and Reg. 26. We are proposing approval of this non-substantive change to the SIP-approved portions of Reg. 19 and Reg. 26 as part of this action. The non-substantive changes are being approved here to maintain consistency between State rules and the approved SIP.

B. Updated References to Federal Regulations

Revisions were made to Regulations 19 and 26 to reflect more recent publication and/or effective dates of federal regulations that are referenced in the Arkansas SIP. These revisions are found in Regulation 19, Chapter 4, Sections 407 and 412; Chapter 7, Sections 702 and 703; Chapter 9, Section 903 and 904; and Appendix A and Regulation 26, Chapter 4, Section 401; and Chapter 6, Sections 603 and 604. The TSD for this action includes a complete listing of the

revised reference dates along with a description of any changes the update version(s) of the federal rule contained. These changes are being approved here to maintain consistency between State rules and the approved SIP and so that the current SIP references the updated federal regulations.

C. Clarifications to Existing SIP Provisions

Revisions to provide additional clarification in the regulatory language were made to Reg. 19, Section 407 and Reg. 19, Appendix A. These changes were made to ensure consistency within the regulatory provisions of Reg. 19 and to make the existing requirements clearer within the regulatory language itself. The TSD for this action denotes the revisions made to the regulatory text and details regarding the basis for the revisions. EPA does not believe that the approval of the revisions made to provide additional clarification impact the regulations ability to meet the applicable CAA requirements for the Arkansas SIP, including non-interference with attainment.

D. Revisions to Address EPA's Previous Disapproval

EPA's final rulemaking effective June 22, 2016, disapproved severable portions of the Arkansas SIP submittal dated November 6, 2012 that adopted the Biomass Deferral because they were no longer consistent with federal laws and regulations (81 FR 32239). In response to EPA's 2016 final rulemaking, Arkansas adopted subsequent revisions to address the disapproval and remove the previously adopted biomass deferral language at Reg. 19.904(G)(2)(b). In this action, EPA is proposing to approve these revisions to the Arkansas SIP that address our 2016 disapproval.

E. Permit Flexibility Provisions – Regulation 19.414, 19.415, and 19.416

Arkansas submitted the permit flexibility provisions found in Reg. 19.414, 415, and 416 for incorporation into the Arkansas SIP. As discussed in this section, EPA finds that the revisions to add these provisions into the SIP are approvable.

Reg. 19.414 – Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios, allows permittees to implement alternative scenarios that were initially included in their permit application, without a permit revision or notification to the Department. These alternative scenarios underwent review by the Department and were included, along with any associated requirements (e.g., monitoring, recordkeeping, and reporting requirements), in the permit that underwent public review prior to issuance. Section 110(l) is met because the Department's review is required by the SIP's permitting rules at Reg. 19.402 and 19.405(A) to ensure that the applicable requirements, which include a demonstration that there will be no interference with attainment and reasonable further progress and any other applicable requirement of the Federal CAA, are met for each scenario. As such, approval of the SIP revisions incorporating Reg. 19.414 does not impact the SIP's ability to continuing meeting the applicable requirements since the underlying permitting process through which the alternative scenarios are reviewed, approved, and incorporated into the permit is a SIP-approved process. EPA finds that the approval of Reg. 19.414 into the Arkansas SIP will satisfy the requirements of Section 110(l) to not interfere with applicable requirements concerning attainment or other applicable CAA SIP requirements.

Reg. 19.415 – Changes Resulting in No Emissions Increases, allows permittees to make certain changes within the facility that otherwise contravene permit terms without a permit revision if the changes are not modifications under Title I, do not exceed emissions allowed under the permit, do not violate applicable requirements, and do not contravene federally

enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements. Pursuant to Reg. 19.415(C), these provisions cannot be used to violate applicable requirements, which would include the circumvention of state or federal permitting requirements and cannot be used for changes that result in emission increases beyond short-term or long-term permitted limits, which were determined to be protective of the NAAQS by ADEQ during permit issuance. Reg. 19.415(D) also prohibits any changes that would contravene federally enforceable permit limits, which would include any applicable SIP requirements. ADEQ has indicated that they would deny any request pursuant to Reg. 19.415 that violates a state or federal permit or permitting requirement.⁴ Section 110(l) is met because Reg. 19.415 prohibits changes that circumvent applicable state and federal permitting requirements, including those contained in the SIP, and does not allow for increases in emissions beyond permitting limits that were determined during the SIP-approved permitting process to not cause or contribute to a violation of the NAAQS. EPA finds that the approval of Reg. 19.415 into the Arkansas SIP will not interfere with applicable requirements concerning attainment or other applicable CAA SIP requirements.

Reg. 19.416 – Permit Flexibility, codifies ADEQ’s discretion to grant extensions to testing, compliance or other dates in a permit; to grant a request to allow temporary emissions and/or testing that would otherwise exceed a limit in a facility’s permit; and to allow an alternative to monitoring specified in a facility’s operating permit. Reg. 19.416 cannot be used to circumvent state or federal permitting requirements, and it prohibits at Reg.19.416(A)(2), (B)(2), and (C)(2) any changes that would violate federal requirements, which would include any applicable SIP requirements. The temporary emissions increases allowed under Reg. 19.416 are

⁴ Clarification letter dated March 11, 2019, addressed to Ms. Adina Wiley, EPA Region 6, from Mr. Thomas Rheume, ADEQ.

limited to less than five tons of any individual criteria pollutant, one ton of any single hazardous air pollutant, and 2.5 tons of any hazardous air pollutant. The temporary emissions increases allowed by Reg. 19.416 are at levels that would qualify as an insignificant activity under SIP-approved Reg. 19, Appendix A, Group A(13) and are expected to have negligible impacts on ambient air concentrations and not interfere with the NAAQS. Section 110(l) is met because Reg. 19.416 prohibits changes that circumvent applicable state and federal permitting requirements, including those contained in the SIP, and the temporary emissions increases allowed by Reg. 19.416 are limited to levels that would not impact compliance with the NAAQS. EPA finds that the approval of Reg. 19.416 into the SIP will not interfere with applicable requirements concerning attainment or other applicable CAA requirements for SIPs.

III. Proposed Action

We are proposing to approve portions of the revisions to the Arkansas SIP submitted on October 24, 2002, July 26, 2010, November 6, 2012, and March 24, 2017. Specifically, we are proposing to approve the following revisions:

- Revisions to Regulation 19, Chapter 4 adopted on December 5, 2008 (effective January 25, 2009), June 22, 2012 (effective July 9, 2012), October 26, 2012 (effective November 18, 2012), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Chapter 7 adopted on February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Chapter 9 adopted on February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Chapter 11 adopted on February 26, 2016 (effective March 14, 2016);

- Revisions to Regulation 19, Appendix A adopted on December 5, 2008 (effective January 25, 2009), June 22, 2012 (effective July 9, 2012), October 26, 2012 (effective November 18, 2012), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 3 adopted on August 23, 2002 (effective September 26, 2002), December 5, 2008 (effective January 25, 2009), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 4 adopted on August 23, 2002 (effective September 26, 2002), December 5, 2008 (effective January 25, 2009), June 22, 2012 (effective July 9, 2012), October 26, 2012 (effective November 18, 2012), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 5 adopted on December 5, 2008 (effective January 25, 2009) and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 6 adopted on August 23, 2002 (effective September 26, 2002), December 5, 2008 (effective January 25, 2009), and February 26, 2016 (effective March 14, 2016); and
- Non-substantive revisions throughout the current SIP-approved portions of Regulation 19 and 26 that replace “Section” with “Reg.” within section headings (e.g., “Section 26.101” revised to “Reg. 26.101”) that were adopted on December 5, 2008 (effective January 25, 2009).

EPA is not proposing any action to be taken on the portions of the July 26, 2010 and November 6, 2012 SIP revision submittals that were listed in the letter from Arkansas dated March 28, 2019, that requested the withdrawal of those revisions from EPA’s consideration for approval into the Arkansas SIP.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Arkansas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 21, 2019.

David Gray,

Acting Regional Administrator, Region 6.

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